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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43212
Plaintiff-Respondent,)	
)	Cassia County Case No.
v.)	CR-2008-2797
)	
LAURA ANNETTE RENZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Renz failed to establish that the district court abused its discretion by revoking her probation and executing a reduced unified sentence of four years, with one year fixed, imposed upon her guilty plea to attempted grand theft?

Renz Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Pursuant to a plea agreement Renz entered an Alford¹ plea to attempted grand theft, and the district court imposed a suspended unified sentence of seven years, with

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

two years fixed, and placed her on probation for four years. (R., pp.136-38, 147-52, 165-84.)

Approximately 18 months later, Renz was required to serve 15 days of discretionary jail time for using and testing positive for methamphetamine, and admitting to associating with known drug users and sellers. (R., pp.185-86.) Less than nine months later, Renz's probation officer arrested her on an Agent's Warrant. (R., pp.187-89.) The state subsequently filed a motion for probation violation alleging Renz had violated her probation by failing to submit monthly reports to her probation officer for February and March 2011; incurring a new charge for possession of drug paraphernalia; testing positive for methamphetamine on three occasions, associating with, and purchasing methamphetamine from, known drug users and sellers; failing to attend and/or successfully complete substance abuse programming; and incurring the new felony charge of possession of methamphetamine. (R., pp.198-205, 221-24.) Renz admitted to violating some of the conditions of her probation, and the district court revoked her probation, ordered her underlying sentence executed, and retained jurisdiction for 365 days. (R., pp.248-51.) After a period of retained jurisdiction, the district court placed Renz on probation for five years. (R., pp.264-71.)

Less than two years after the district court reinstated Renz on probation, the state filed a new motion for probation violation alleging Renz had violated her probation by failing to report to her probation officer as directed, testing positive for methamphetamine, failing to attend a work crew as directed, abusing her prescription diet medication, and refusing to submit to substance abuse testing as directed. (R.,

pp.273-92.) Renz admitted to violating her probation as alleged, and the district court continued her on probation as previously ordered. (R., pp.298-99, 307-09.)

Approximately eight months later, Renz's probation officer arrested her on an Agent's Warrant, and the state subsequently filed a motion for probation violation alleging Renz had violated her probation by incurring new criminal charges, failing to maintain full time employment, testing positive for methamphetamine, failing to pay her cost of supervision fees, and failing to submit to substance abuse testing as directed. (R., pp.310-11, 315-23.) Renz admitted to violating some of the conditions of her probation, and the district court revoked her probation and ordered her underlying sentence executed; however, it *sua sponte* reduced Renz's unified sentence to four years with one year fixed. (R., pp.327-31.) Renz timely appealed from the district court's order revoking her probation. (R., pp.343-45.)

Renz asserts the district court abused its discretion when it revoked her probation in light of the "recovery skills and tools" she has learned while on probation. (Appellant's brief, p.4.) The record supports the district court's decision to revoke Renz's probation.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Renz is not an appropriate candidate for probation. At the probation violation disposition hearing, the state addressed Renz's ongoing decisions to abuse illegal substances, her failure to accept responsibility for her actions and overall dismal performance while on probation. (Tr., p.10, L.8 – p.13, L.2 (Exhibit A).) The district court subsequently articulated the correct legal standards applicable to its decision and set forth in detail its reasons for revoking Renz's probation and executing a reduced sentence. (Tr., p.18, L.1 – p.21, L.11 (Exhibit B).) The state submits that Renz has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the probation violation disposition hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order revoking Renz's probation and executing a reduced sentence.

DATED this 29th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: All right. Madam clerk, mark that
2 and it will be admitted unless there is an objection
3 from the state.

4 MR. LARSEN: There is no objection,
5 Your Honor.

6 THE COURT: All right. Thank you.

7 So, Mr. Larsen, on behalf of the state.

8 MR. LARSEN: Thank you, Your Honor. May it
9 please the Court and Counsel.

10 Your Honor, I'm somewhat at a loss on
11 what to say regarding Ms. Renz. The probation
12 violation that was filed in this matter I think
13 addresses some issues. And I think, quite frankly,
14 that Ms. Renz continues to fail to address these
15 issues.

16 There's a number of these violations that
17 she chooses not to admit to. She has wonderful
18 excuses for those, no money, but yet what I don't
19 understand is there's no money to go take the hair
20 follicle test. There is no money to come in and do
21 these tests and we are still able to afford drugs,
22 apparently.

23 Granted, I understand that sometimes
24 there are other ways of getting drugs, not
25 necessarily money. But this case is a 2008 case.

1 And I think Ms. Renz has had the benefit of almost
2 everything we can offer. And yet we still have
3 continued drug use.

4 I understand that her case is not much
5 different than another case that we'll be taking up
6 this afternoon, Ms. Skaggs, continued drug use,
7 continued criminal associations. And I think
8 Mr. Wilkinson's comments -- well, it's not a
9 numbered page, but under comments and
10 recommendations, "Since being placed back on
11 probation, the defendant's progress has been poor."
12 I think that is a gross understatement.

13 She is not taking responsibility for her
14 actions. I understand the letter that was given to
15 the Court by defense counsel. I understand her
16 positions contained in that letter, but part of my
17 duty is to protect society. And I think Ms. Renz
18 needs to understand that society cannot tolerate
19 this type of illegal behavior.

20 It is not -- it's not a game. It's not
21 pick and choose what rules you want to follow.
22 Terms and conditions must all be followed, as the
23 Court well knows. And I just don't think that it's
24 appropriate for Ms. Renz to be on probation anymore.
25 So the next step is does the state think it's

1 appropriate for her to go on retained jurisdiction?
2 And I'm not sure.

3 I'm sure that the Court has the proper
4 way to approach it. And I would say that if
5 Ms. Renz thinks that she can address her addiction
6 and her problems by seriously going through a rider,
7 then maybe that is an appropriate issue or
8 appropriate way to handle this issue.

9 But from the state's perspective, I'm
10 just not sold that she is taking this serious enough
11 to not only perform on the rider because I think she
12 can go and perform on a rider. She has had the
13 opportunity before. But then to follow it up with
14 the good probation, I don't think that is going to
15 happen. I'm not inclined to believe that.

16 However, imposition of time, I don't know
17 if that's going to help her at all either, but I
18 have to look at what my job is to protect society.
19 And I would say that imposition might be the
20 appropriate method. The underlying charge here is
21 grand theft and I think we need to protect society
22 from people who choose not to follow the law.

23 And I think society needs protected from
24 Laura Renz at this point. She has proven herself
25 not to be an appropriate candidate for probation.

1 And I'm sad to say that. Credit for time served as
2 calculated by the state is 875 days.

3 And does the Court have any questions?

4 THE COURT: I don't, thank you. Mr. Byington?

5 MR. BYINGTON: Just a quick -- I didn't hear
6 what he said. It was an attempted grand theft, so
7 attempt is the maximum of half of the original
8 sentence.

9 Now, the underlying sentence was 2 plus 5
10 for a total of 7. And we agreed that the amount,
11 credit for time served is 875. She's already served
12 an awful lot of jail time. Of that, there was
13 345 days on riders and 530 days in jail.

14 As of today on this probation violation,
15 she spent 49 days in jail. Back in June the Court
16 had suggested asking her if maybe she just decided
17 she would rather spend some -- a commuted jail
18 sentence in prison and be done with this once and
19 for all. And she is having some real second
20 thoughts about that suggestion.

21 This is a 2008 case for an attempted
22 grand theft. And she has struggled and struggled
23 and struggled. And, again, in the letter that she's
24 provided the Court, part of her problems was staying
25 on her medication. She has to go to Oregon to get

APPENDIX B

1 THE COURT: All right. Well, thank you,
2 Ms. Renz.

3 So in terms of the probation violations
4 that you admitted to, I'll find they are all willful
5 except for the one pertaining to payment of fees to
6 the Department of Corrections. And, you know, when
7 we look back through your history, we got to
8 remember what brought us here in the first place.
9 And that had to do with the attempt to steal a truck
10 at a dairy. You reached a plea agreement, and that
11 was way back in October of 2008.

12 And that plea agreement resulted in an
13 amended charge of an attempted grand theft. And
14 your plea, which the Court accepted -- and I want to
15 spend a little time reviewing all of this because
16 it's important -- we started with probation February
17 of 2009, and that was not successful. Probation
18 violation occurring, filed May of 2011. And the
19 essence of the violations was use of
20 methamphetamine.

21 And so at that point, the focus on your
22 case moved on, and we tried to retain jurisdiction
23 program. And the point of that was to see if we
24 could somehow build in a way for you to be
25 successful on probation and give you a chance to

1 participate on probation.

2 And I did place you back on probation
3 following the rider program in October of 2012. And
4 following that, April 2014, while you were on
5 interstate compact in Oregon, you failed your
6 probation there, substance abuse. And the essence
7 being three significant violations in Oregon and
8 Oregon refused to accept you any longer as a
9 probationer.

10 And so when we got you back here in June
11 of 2014, I put you back on probation. I think I'm
12 starting to look like I'm kind of not very bright
13 because I have just always felt like you could do
14 it. Wanted to give you every chance you could to
15 show to yourself that you could. And you couldn't.

16 So that's where we are today. And
17 there's no question you have served a lot of time
18 through probation violation time and rider time and
19 it adds up to 875 days. And that's an important
20 consideration, but the key distinction for me is you
21 call it just a relapse.

22 I call it a new felony crime, which the
23 punishment authorized by the Idaho legislature is 7
24 years in prison. I can't ignore that time after
25 time after time. And what you demonstrated is that

1 whatever it is that is happening for your recovery
2 in the community is not working.

3 And the problem is you are held to a very
4 high standard, and that is abstinence and sobriety.
5 And we are not there. And I don't see any reason to
6 believe that we will get there in the foreseeable
7 future.

8 And so I think the time now has come to
9 realize the realities and to look at the underlying
10 situation, your life situation, your family's life
11 situation. It's clearly all kinds of havoc being
12 wrought throughout every place we look. But we
13 still have to go back and deal with the attempted
14 grand theft of the particular vehicle.

15 And so the last measure of your LSI score
16 was 44, which is high risk to re-offend. I don't
17 see any benefit to another rider program at this
18 point, because we've had one. And we've had
19 community treatment and none of that has worked, and
20 so there we are.

21 I think we can now move on and I will do
22 so. Will revoke your probation, impose the
23 suspended sentence, credit you with 875 days time
24 served. I'm going to amend your sentence as
25 follows.

1 Your sentence will be amended to a
2 sentence of 4 years unified with the first year
3 fixed and determinate. And so with that amendment,
4 then I'm going to remand you to the Department of
5 Corrections and wish you all the luck in the world.

6 And hopefully your presentation to the
7 parole commission will be fruitful and eventful for
8 you, and perhaps, the parole commission will be
9 willing to see you back in the community after your
10 progress that you will demonstrate to them and your
11 programming there at the corrections facility.

12 You do have a right to appeal. If you
13 wish to appeal, you should. And you must file your
14 appeal within 42 days. So it's important for you to
15 let Mr. Byington know that so that he can file that
16 appeal for you in a timely fashion.

17 Good luck to you.

18 MR. BYINGTON: Your Honor, I want to make sure
19 I understood. Was that a 1 year indeterminate, so
20 it would be 3 years fixed plus 1 year indeterminate
21 for a total of 4?

22 THE COURT: No. The other way around.
23 Unified 4, first year fixed.

24 MR. BYINGTON: So 1 year determinate and 3
25 years indeterminate.